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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,099	03/22/2001	Masanori Ikari	010270	2044
23850	7590	05/13/2004	EXAMINER	
ARMSTRONG, KRATZ, QUINTOS, HANSON & BROOKS, LLP			NGUYEN, THU V	
1725 K STREET, NW			ART UNIT	PAPER NUMBER
SUITE 1000			3661	
WASHINGTON, DC 20006			DATE MAILED: 05/13/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/814,099	IKARI, MASANORI
	<b>Examiner</b>	<b>Art Unit</b>
	Thu Nguyen	3661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 February 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 4-10 is/are withdrawn from consideration.
- 5) Claim(s) 2,3 and 11-13 is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 August 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

The amendment filed on January 16, 2004 has been entered. By this amendment, claims 1 and 11 have been amended, claims 4-10 have been withdrawn from consideration, claims 1-3, 11-13 are now examined in this application. All claims 1-13 are now pending in the application.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hanamoto et al (US 5,356,259).

As per claim 1, Hanamoto teaches a working unit control apparatus of an excavating and loading machine in which a controller outputting a boom control command value to the boom control valve on the basis of the boom lever operating amount and a bucket control command value on the basis of the bucket lever operating amount (col.13, lines 38-53; col.14, lines 19-66); Hanamoto further teaches a load judging portion (col.16, lines 39-40, lines 42-47), and starting excavation when boom lever is operated and the load judging portion judges that the vehicle is under excavation (col.9, lines 20-37, lines 23-25; col.16, lines 42-61). Moreover, since Hanamoto teaches a hydraulic working unit (fig.2), Hanmoto obviously teaches the well known boom cylinder, boom control valve, boom lever, boom lever operating amount detector, bucket

cylinder, bucket control valve; bucket lever, bucket lever operating amount detector that are well known to be included in the hydraulic working machine as claimed. Hanamoto does not explicitly teach an excavating state detecting means. However, since Hanamoto teaches the capability to recognize the user operation on the pedal 10 (fig.1) for automatic excavating mode (col.16, lines 39-42), and since including a means for detecting the level of operation on the pedal would have been known. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to include an excavating state detecting means for detecting user command of excavation based on the stepping amount of the pedal 10 of Hanamoto in order to facilitate detecting excavation state of the working unit based on the command input from the operator.

*Allowable Subject Matter*

3. Claims 2-3, 11-13 are allowed.

4. The following is an examiner's statement of reasons for allowance:

Prior art of record does not disclose a working unit control apparatus of an excavating and loading machine set forth claims 2-3, 11-13. Specifically, prior art of record does not teach the excavating machine that starts an automatic excavation control when the load judging portion judges that the vehicle is under excavation and the operating amount change judging portion judges that the boom lever operating amount changes from a predetermined operating amount to a zero amount. Moreover, prior arts of record does not teach a working machine having an excavating state detecting means that is constituted by a vehicle speed detector and engine rotational speed detector, and a load judging portion the judges that the vehicle is under

excavation when the vehicle speed is equal to or less than a value shown by a predetermined curve relating to the engine rotational speed. Further, prior art of record does not disclose an excavating machine having an excavating state detecting means that is constituted by an accelerator pedal operating amount detector that detects an accelerator pedal operating amount, and an engine rotational speed detector that detects an engine rotational speed; and a load judging portion that judges that the vehicle is under excavation when the accelerator pedal operating amount is equal to or more than a predetermined operating amount and the engine rotational speed is equal to or less than a predetermined rotational speed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Response to Arguments***

5. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground of rejection.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

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Art Unit: 3661

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(703) 305-7687, (for formal communications intended for entry)

**Or:**

(703) 305-7687 (for informal or draft communications, please label  
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park V, 2451

Crystal Drive, Arlington, VA., Seventh Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Nguyen whose telephone number is (703) 306-9130. The examiner can normally be reached on Monday-Thursday from 8:00 am to 6:00 pm ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black, can be reached on (703) 305-8233. The fax phone number for this Group is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1111.

*Nguyen, Thu*

THU V. NGUYEN  
PRIMARY EXAMINER

May 10, 2004